State of Vermont
Department of Education

In re:	)	Special Education Due Process Hearing
	)	Docket No. DP05-13
	)	
	)	**FINDINGS OF FACT, CONLUSIONS OF LAW,**
	)	**AND ORDER**

INTRODUCTION

The parents of (hereinafter referred to as "the student") originally filed a request for due process against the Windham Southeast Supervisory Union (hereinafter referred to as "the District") in November 2004. That case (Docket No. DP04-35) was dismissed without prejudice by hearing officer Alan Rome on or about June 1, 2005. By letter of June 14, 2005 the parents requested that their appeal be "reinstated". On June 17, 2005 the Department of Education assigned the matter to the undersigned hearing officer under the instant docket number. There is no dispute that the instant matter, in effect and *inter alia*, constitutes a reinstatement of all the issues raised by the parents in Hearing No. DP04-35. At all times in the instant matter the parents have been represented by Eileen Blackwood, Esq. The District is represented by Steven Stitzel, Esq. and Jill Spinelli, Esq.

On July 8, 2005 this hearing officer set the matter for hearing on August 29-31, 2005. In a conference call with the parties' attorneys on August 25, 2005 the hearing officer directed that the hearing be "bifurcated", in that the parties would present evidence on the issue of the appropriateness of the District's IEP before any consideration of the issue of the appropriateness of the parents' unilateral placement. The parties did not oppose this ruling.

A hearing was held on August 29, 30, 31, and September 15, 2005. At the close of the hearing the parties agreed to submit proposed findings and conclusions on the issue of the sufficiency of the District's IEP by October 11, 2005. It was further agreed that the hearing officer would issue a "memorandum of decision" by October 14, 2005, which would inform the parties, *inter alia*, whether further hearing on the issue of the appropriateness of the parents' unilateral placement would be necessary. It was further agreed that the hearing officer would issue a complete decision in the matter by October 28, 2005. The parties waived the running of the 45-day rule at least until that date.

Both parties submitted their proposed findings and conclusions by October 11, 2005.[1] After that date, both parties submitted "responses" to the other parties' submissions. Inasmuch as no provision was made for additional time to submit such responses, and neither party having requested additional time in advance for this purpose, the hearing officer has disregarded both parties' submissions made after October 11, 2005.[2] On October 14, 2005 the hearing officer issued a **Memorandum of Decision** in advance of the following findings, conclusions, and order.[3]

FINDINGS OF FACT

1. The student is a seventeen-year-old girl who lives with her parents in Dummerston, Vermont.

2. The student has a pervasive developmental disorder with autistic features and mental retardation. She has received special education services since preschool, and is

[1] The parents also timely submitted a separate memorandum of law.
[2] The District could argue that it was not made clear on September 15 whether the parties could also submit a memorandum of law with their requests for findings and conclusions. However, inasmuch as virtually all the rulings in this matter are in the District's favor, there is no prejudice in excluding any submission (by either party) made after October 11, 2005.
[3] The decision in this matter also renders moot a Motion in Limine made by the District On August 24, 2005, and denied by the hearing officer in the conference call held on August 25, 2005. It was ruled, however, that any objection to the relevance of any evidence introduced by the parents regarding the appropriateness of their unilateral placement could be preserved. At this point, this will be an issue only if the hearing officer's decision herein is subsequently reversed and further evidence is subsequently ordered to be taken on this issue.

currently eligible under the category of "other health impaired".

3. Currently, the student is functioning academically at about the third-grade level. She can read and write, and use a computer. However, she has marked deficits in social interaction. Her speech is difficult to understand, especially to those who aren't familiar with her. She has a cooperative and pleasant demeanor, but has extreme difficulty with spontaneous social interactions. She is easily distracted by the presence of other people, noises, and activity around her.

4. The student has a relative strength in music. She can play the piano, and she greatly enjoys listening to and performing music.

5. The student's distractibility poses significant academic challenges. There is no dispute that she generally needs 1:1 direct instruction in a quiet and secure environment.

6. From 1999 through June 2003 (i.e., until the end of eighth grade) the student attended the District's Dummerston Elementary School. She was placed in the regular education setting there with a full-time 1:1 paraeducator, and had a specific space ("cubby") she and

her aid could go to by themselves whenever necessary to avoid distraction.

7. However, during the student's eighth grade year at Dummerston she experienced increasing distress at school, often the result of overstimulation by noise and activities around her.

8. At this time the student's IEP team began meeting to plan the student's transition to high school. From the beginning, the student's parents were insistent and adamant that they did not wish the student to attend Brattleboro Union High School (BUHS), the District's high school. Because of this, the IEP team focused its attention and energies on potential placements other than BUHS.

9. It is clear from the records of those IEP meetings and the testimony of team members present at those meetings that the development of a program at a location other than BUHS was based on the parents' insistence in this regard and the potential availability of other suitable options that appeared to exist at that time. There is no evidence or indication that the IEP team, as a whole, ever "decided" that BUHS could not, under any circumstances, constitute a suitable placement in order to implement the student's IEP.

10. After exploring and discussing several alternative placements, the IEP team determined in July 2003 that the student would be placed at the BUHS "Downtown Campus" (BUHSDC) beginning in September 2003.

11. At that time BUHSDC was an alternative regular education program operated by the District at a rental location in downtown Brattleboro, a few miles from the BUHS main campus. The program there consisted of a half-day course in "applied media" for a group of 12 to 15 students. The students in the course attended the BUHS main campus in the morning and went to BUHSDC for lunch and their two afternoon "blocks". The course at BUHSDC was a two-block independent team-project-based learning experience using various forms and applications of sound and visual media.

12. The student's program at BUHSDC entailed the creation of a semi-private alcove adjacent to the classroom for her individualized 1:1 instruction, which she received in the morning before any other students were at the facility. The student then ate her lunch with a few of the regular BUHSDC students and then participated in team media projects in the afternoon with the help of a 1:1 instructor. Whenever necessary the student had exclusive use of her alcove, apart from the other students.

13. The student's November 2002 IEP was revised in July 2003, shortly after the student had finished 8th grade at Dummerston, to reflect the implementation of this program, which was to begin in September 2003. The IEP included provisions for the student to receive 1:1 academics, 2:1 physical and occupational therapy, and small group social instruction. However, when the IEP was revised in July 2003, the team also included the following language under "general characteristics of the student's placement": "(Student) will not be at the main BUHS complex"; she is enrolled in a regular education course, the Downtown Campus, where many of her education needs will be addressed."

14. Unfortunately, this single sentence took on a life of its own vis-à-vis the disputes that would later develop in this matter. As noted above, however, the evidence in this matter is clear that the IEP team's inclusion of this sentence did not reflect a "decision" or "consensus" on the part of the team (other than the parents) that placement at BUHS was *necessarily* "inappropriate". Rather, it was a concession by other members of the team to the *parents*' insistence at the time that the student not go to BUHS under *any* circumstances,

and a recognition by the team that BUHSDC was less restrictive than a special education placement at BUHS, in that the applied media course downtown was a regular education program, even though the setting itself was more "isolated" than BUHS.

15. The student began her program at BUHSDC as scheduled in September 2003. As noted above, the student attended BUHSDC by herself every morning and received 1:1 instruction from a special education teacher assigned exclusively to her.

16. There is no dispute in this matter that the student's 2003-04 program and placement at BUHSDC was appropriate to the student's needs and met the requirements of her November 2002 IEP.

17. The most significant problem that occurred there happened a few weeks into the fall of 2003. The parents reported to the District that the student had told them that her 1:1 special education teacher had hit her. The District investigated, and even though it concluded that the report was unsubstantiated, it terminated the employment of the teacher. The District then hired the student's mother as a permanent substitute as the student's 1:1 teacher.

18. The parents filed an administrative complaint against the District regarding the incident and filed criminal charges against the teacher. This led the District to decide that its attorney would be present at all subsequent IEP meetings with the parents.

19. Despite some reservations by certain District personnel (see *supra*), there is no dispute in this matter that BUHSDC was an appropriate placement for the student and that her November 2002 IEP, as amended in July 2003 provided FAPE.

20. However, this IEP was set to expire on November 16, 2003. On November 3, 2003 the IEP team began meeting to discuss the next IEP. The parents specifically notified the team in writing that they were not ready to make any changes to the July 2003 revised IEP. (Ex. 140.) The student's mother clearly stated to the team at the November 3 meeting that she thought the BUHSDC placement was going well. (Ex. 138.) The team agreed to meet again on December 2, 2003.

21. Around this time, there were "rumors" in Brattleboro that the school board would be closing the downtown campus facility (BUHSDC) at the end of the 2003-04 school year. At the December 2 IEP meeting the District

proposed removing the language in the IEP stating that the student would not be at BUHS (see paragraph 13, *supra*). Although no decision had been made regarding placement, the student's mother vehemently opposed such a change. After an extensive discussion of other proposed changes to the IEP, none of which generated any significant disagreement, another meeting was set for early January 2004. Except for the parents, the IEP team left that meeting thinking that an appropriate IEP could be finalized at the next meeting.

22. However, based on the records of these IEP meetings and the testimony of virtually every witness involved in the IEP process it can safely be said that the parents and the rest of the IEP team essentially "parted ways" as of the December 2, 2003 IEP meeting. Although the parents were uncomfortable with the presence of the District's attorney's continuing presence at the IEP meetings, the evidence is clear that the parents' overriding concern was the possibility that the student might be placed at BUHS. Near the end of the January 9, 2004 IEP meeting the student's mother essentially threw down the gauntlet, saying that she would not approve *any* IEP that allowed for the possibility of placement at BUHS. (Ex. 154.)

23. The parents' refusal to consider any IEP that did not contain an explicit ban on placement at BUHS essentially doomed the process. The evidence (i.e., meeting minutes and participants' testimony) clearly shows that after December 2003 the parents essentially steered the agenda of every subsequent IEP meeting away from finalizing the relatively discreet, straightforward, and uncontroversial changes to the November 2002 IEP that the IEP team (including the parents) had been near consensus on after the November 2003 meeting. (See e.g., Ex.155-158.)

24. At the January 9, 2003 meeting the parents requested (for the first time) that the student be evaluated for "music therapy" and "movement therapy". (The District formally denied these requests by notices dated March 10, 2003.)

25. At the next IEP meeting, held on March 10, 2004, the parents informed the IEP team that they disagreed with the proposed IEP "as a total package". The parties agreed that pending the resolution of those disagreements the student's November IEP would be considered the "stay-put IEP". Much of that meeting was taken up with discussions whether the parents' concerns regarding music and dance therapy had to be formally addressed in the written IEP.

The meeting concluded with a request by the District that the parents "circle" any items of the proposed IEP with which they disagreed.

26. The District sent the parents a proposed IEP on March 19, 2004, and again requested that the parents circle any items of disagreement. This IEP stated that the student's placement would be at BUHSDC for the remainder of the 2003-04 school year. No placement was specified for summer or fall 2004. The parents did not respond to the request to specify their disagreements with this IEP.

27. In April 2004 the District notified the parents that BUHSDC would be closing in June 2004, and would not be available after that date.

28. On May 10, 2004 the District mailed the parents an IEP which it indicated it would be "implementing" as of May 17, 2004. This IEP was essentially identical to the one that had been mailed to the parents on March 19. (see *supra*).

29. On May 14, 2004 the student's mother met with the District's Special Education Coordinator and its Support Services Director. The District proposed an off-campus site near BUHS ("Famolare") at which to deliver the student's special education academic and support services.

Admittedly, this was a relatively isolated setting with only one other student, who was two years younger than the student. However, the District offered it primarily as a reasonable alternative to BUHS given the parents' intransigence in this regard. T. Merchant.

29. By this time, however, the parents had committed themselves to an alternative "family-implemented and district-supported" IEP that they were in the process of developing on their own (see Ex. 185). At the next IEP meeting on May 20, 2004 it became clear that the parents were only interested in discussing an alternative program that they, themselves, would direct and oversee.[4] At that meeting the parents rejected the Famolare placement and turned the remaining discussion to their own proposed placement. Ex. 181-184, T. Saunders, T. Brown.

30. The student was to turn 16 in July 2004. One area of agreement between the parents and the District was the recognition that as of that date any IEP would have to include specific transition goals, objectives, and services. From the beginning, all team members were in agreement that the student had disproportionate talent and interest in music, and that music should be incorporated

[4] Much of the May 20, 2004 IEP meeting also involved a discussion of the student's summer 2004 services, which are not at issue herein.

into her IEP where appropriate (see e.g., Ex. 555, 48, 49, and 53).

31. On June 8, 2004 the District's Special Education Coordinator sent the parents a draft copy of transition goals and objectives to be incorporated into the student's IEP that addressed the student's goal and intention to attend "post-secondary music schooling" at Berkshire Hills Music Academy. Ex. 193-196.

32. The June 8 notice also informed the parents that the next IEP meeting on June 15 would include a discussion of a change of placement to "the District's Life Education Program".[5] Ex. 193.

33. On June 11, 2004 the parents sent the District a "prototype transition IEP".

34. At the June 15, 2004 IEP meeting the parents essentially refused to discuss any placement at BUHS (Ex. 203, T. Saunders, T. Brown) and directed the entire discussion to the implementation of their proposed program. At the close of the meeting the parents agreed to type up their proposal and distribute it to a "core team" prior to the next scheduled meeting on August 3, 2004 (Ex. 204).

[5] Although it does not affect any findings or conclusions herein, it is noted that the parents claim not to have received this notice until June 14, 2004.

35. That meeting never occurred, and the District received no further communication from the parents until July 8, 2004 when the parents filed a request for mediation with the Vermont Department of Education. Mediation sessions were held on August 3 and 9, 2004. Another was scheduled for August 23, 2004, but on August 15, 2004 the parents notified the District that they were removing the student from the District and unilaterally placing her in a "community-based education program" effective September 1, 2004.

36. On August 23, 2004 the District sent the parents a "final copy of the IEP being offered by the District for the coming year" (Ex. 19). That IEP included incorporating music into the student's goals, objectives, and services, 76, 77, and 81) and the development of a transition plan of "individual music study" (Ex. 82). It also included the placement of the student in the BUHS Life Education Program for the 2004-05 academic school year (Ex. 72).

37. The critical issues in this matter are whether the District's proposed IEP was substantively and procedurally adequate and, if so, whether the BUHS Life Education program was the least restrictive appropriate placement. The evidence in this matter, including the

admissions of the parent's own experts, if not the student's mother herself, clearly supports the District's position on all these issues. As a starting point, every witness who testified, *including the student's mother and her two experts*, agreed that the student's placement for the 2003-04 school year at BUHSDC was appropriate and effective.

38. Moreover, the student's psychologist testified that the student's (unilateral) 2004-05 program was an attempt by him and the parents to "recreate" the BUHSDC setting. He stated that the key features of the BUHSDC setting were the quiet environment, the opportunity for supervised peer contact, and community integration.

39. The psychologist admitted that a placement at BUHS, though "not ideal", was one that "could work". His chief concern about a placement at BUHS was the "physical layout", i.e., the availability of quiet space for 1:1 and the availability of appropriate "social skills" and music instruction free of distractions. He stated that specific "conditions of learning" were more important to the student than any "overall setting".

40. A key concern of both the parents' witnesses was ongoing construction that was occurring at BUHS at the time

in question. There is no disagreement in this matter that exposure to construction noise and uncontrolled student activity would render any placement ineffective for the student. However, the student's mother and her witnesses had visited BUHS on only one or two occasions each, and none of them explored with the District or had any independent knowledge of how her IEP would have been implemented there.

41. District personnel credibly testified that despite the construction suitable quiet space was available at BUHS as of September 2004 to deliver any special education and related services called for in the student's IEP. It is found that the concerns of the parents and her witnesses in this regard were based solely on unwarranted assumptions and uninformed conjecture.

42. The District concedes that after the closing of BUHSDC and the moving of the applied media course back to BUHS it was unlikely that that course, as "reconstituted" at BUHS in September 2004, would have been appropriate for the student. This was due primarily to limited physical space and crowding at BUHS. However, due to the continuing uncertainty of the exact location of this course, even into August 2004, the inappropriateness of the applied media

course for the student as of September 2004 was not conclusively known to any of the parties until after the District sent the parents the August 2004 IEP.

43. As noted above, however, the applied media course was a *regular* education class the student participated in at BUHSDC. All the parties agree that it was an appropriate setting to offer the student opportunities to work on social and communication skills with non-disabled peers and to access community-based experiences, as called for in her IEP.

44. There is no claim or evidence, however, that it was ever conceived as the *only* means to access those opportunities. Again, the District's evidence was credible, and essentially uncontroverted, that appropriate opportunities for controlled peer interactions and community experiences could easily and readily have been provided through existing or easily modified courses and programs available at BUHS.

45. When the District offered its "final" IEP to the parents on August 23, 2004, it reflected the fact that the parents had already enrolled the student in the applied media course at BUHS. Given the evidence as to the availability of alternative appropriate courses (e.g.,

individual or small group music instruction) it cannot be concluded that the IEP was "inappropriate" because it still included the applied media course.

46. There is no disagreement in this matter over the importance of music in the student's program, especially in light of her transitional goals after high school. However, based on the testimony of the student's psychologist, as a matter of FAPE it is found that this was the *only* aspect of the student's academic program that arguably required significant "upgrading" from her 2003-04 program at BUHSDC.

47. Again, however, the District presented credible and uncontroverted evidence that individual and small group music instruction was available for the student at BUHS as part of its regular education offerings. There is no evidence that such instruction would not be a reasonable and appropriate means of providing the student with opportunities for controlled contacts with non-disabled peers (to address social skills and communication) as well as helping meet her transition goals relating to a career in music.

48. In summary, the District has clearly shown that placement at BUHS for the 2004-05 school year would have

been substantially similar to the student's program at BUHSDC in 2003-04 and would have also been able to adequately provide the student with enhanced opportunities, including life skills, to address her transition goals relating to music. Other than unsupported fears and assumptions, the parents presented no evidence that placement at BUHS was in any way inappropriate to meet the student's IEP.

49. The District has also shown that the special education and related services and accommodations specified in the IEPs it offered to the parents in June and August 2004 were adequate and consistent with the student's evaluations and assessments. There is no evidence that the parents ever took any issue with any service or accommodation that was specifically set out in those IEPs.

50. This leaves the parents with the argument that the proposed IEPs were *procedurally* deficient. Although this involves mostly disputes of law rather than fact, which are addressed below, it is found that there is a significant disingenuousness to the parents' arguments in this regard that bear substantially on the "equities" of this matter.

51. The evidence in this matter (including the testimony of the parents' two witnesses) is clear that the only real dispute the parents ever had with the District was over placement at BUHS. Based on the testimony and written record there is no question in the hearing officer's mind that as long as BUHSDC could have continued to be the student's placement there would never have been a dispute over the content and wording of any IEP that could not have been easily and readily resolved. The evidence shows that the parents' "global concerns" with the 2003-04 IEP arose only *after* they realized that placement at BUHSDC was in jeopardy.

52. The parents and their witnesses concede that the student's program at BUHSDC in 2003-04 was close to "ideal". The parents and the student's psychologist also concede that the unilateral program instituted by the parents in September 2004 was largely an attempt to "replicate" the BUHSDC program. The parents presented no evidence contradicting the District's credible showing that virtually the same program, with any required modifications (e.g., enhanced music instruction and life skills training), could have been based at BUHS. It is thus difficult to credit the parents' alleged "global concerns"

with the student's IEP as separate and distinct from the issue of placement.

53. One of the parents' two witnesses is a neighbor and family friend who is a psychiatrist. She reviewed the student's "records" and visited BUHS at the parents' request. She testified that her three concerns with the student's potential placement at BUHS originally were "overstimulation", "teasing", and "sexual boundaries and harassment". She testified that after her "evaluation" of the Life Education program at BUHS she still harbored only the first concern--overstimulation. (The weight accorded to her concern about overstimulation is discussed above. The perceived significance of her testimony regarding teasing and sexual harassment is discussed below.)

53. As noted above, the parents unilaterally implemented their parent-directed program for the student in September 2004. They seek reimbursement of their costs in this regard, which as of August 2005 they allege to be slightly over $122,000.

CONCLUSIONS OF LAW AND DISCUSSION

1. **The 2003-04 IEP offered by the District was procedurally appropriate.**

The parents allege that the final 2003-04 IEP was not timely. The evidence shows, however, that the IEP process was prolonged almost exclusively due to the parents implacable concerns regarding placement. At worst, the District can be accused of being overly concerned about consensus and of allowing the process to be essentially commandeered by the parents. As found above, however, were it not for the parents' concerns about placement, the IEP process probably would have been concluded by December 2003. Moreover, everyone agrees that the student continued to receive an appropriate educational program through June 2004. In light of this, it is unreasonable and disingenuous for the parents now to claim lack of timeliness as a procedural deficiency of the IEP justifying their unilateral placement.

Similarly, the parents' allegations regarding team members, student involvement, and participation by other agencies were never raised during the IEP process itself. Other than to *now* identify these alleged deficiencies, the parents make no claim or showing that the provision of FAPE in this matter has been in any way affected by them.

2. **The final IEP offered by the District in August 2004 provided FAPE.**

Although one can legitimately argue with the level of detail and relative emphases in the wording of the proposed IEP, the evidence is clear that the IEP adequately addresses all the overall substantive requirements of the pertinent regulations. See V.S.E.R. §§ 2363 *et seq.*

Much of the dispute over the District's IEP involves transition services and the incorporation of music into the student's academic program. However, the evidence is clear that the core of these disputes is more philosophical than substantive. There is certainly nothing unreasonable about the parents' preference to essentially build an IEP around transition goals and services. Were this issue reached, the parents might well be able to show that their proposed "parent-directed" program was superior to the IEP ultimately offered by the District. In and of itself, however, this does not render the District's IEP inappropriate. See e.g., Slama v. Independent School District No. 2580, 259 F.Supp. 880, 883 (D.C.Minn. 2003). It must be concluded that the IEP offered by the District comports with the requirements of V.S.E.R. § 2363.8(h)(2) regarding the statement of transition services.

Even in this regard, however, the discussion must again return to the issue of placement. As noted above,

there has never been any real dispute between the parties about any specific aspect of the student's academic instruction or related services. The evidence shows that the District was almost always willing to discuss specific suggestions by the parents regarding the student's program. The parents' own witnesses testified as to their satisfaction with the student's 2002-03 IEP and their desire to "replicate" it as much as possible for 2003-04, and beyond. As noted above, had BUHSDC been available for the 2004-05 school year, and had the parents not insisted on a placement other than at BUHS, the evidence is clear that the parties could easily have reached consensus regarding any specific instructional piece or related service in the student's IEP. For this reason, it cannot be concluded that the parents are entitled to reimbursement on the basis of any alleged textual shortcomings of the IEP offered by the District.

3. **The District's placement of the student in its Life Education program at BUHS for the 2004-05 school year provided FAPE for the student in the least restrictive environment (LRE).**

It is indeed unfortunate that the BUHSDC program was discontinued after the 2003-04 school year. However, there

is nothing in the law that required the District to find or create an equivalent program solely in terms of physical location. The student's program is dictated by her IEP. Once it is determined that the IEP is appropriate the only issues regarding placement are whether the IEP can successfully be implemented and whether that placement constitutes LRE.

As found above, the evidence clearly establishes that the District could have essentially "moved" the student's 2003-04 BUHSDC program to BUHS with no adverse affect on her instruction and related services. The parents' concerns about noise and disruption at BUHS, though understandable, were unfounded. Where the IEP required 1:1, 2:1, or small-group instruction in a quiet space the evidence clearly establishes that the District could have provided that at BUHS.

The student's continued participation in the applied media course once it was moved to BUHS was certainly problematic, but somewhat of a "red herring" in terms of the issue in this appeal. The "final" IEP offered by the District did include the student's participation in the applied media course, in which she had been enrolled by the parents prior to the date the IEP was sent to them in

August 2004. The District now does not contest that the applied media course at BUHS was unsuitable for the student. However, it was not clear to any of the parties in August 2004 that this was to be the case.

Obviously, in light of the above, the August 2004 IEP needed further amending to find another course or activity that would meet the goals and skill lessons that had been provided through the student's participation in the applied media course during 2003-04. However, the evidence shows that the parents unilaterally withdrew the student from the District before this issue could be addressed. It also shows that the District could have found other suitable courses or activities for the student either at BUHS or another suitable location, including individual or small group music instruction that would have addressed the goals of music instruction and opportunities for interaction with non-disabled peers. In light of the above, it cannot be concluded that placement at BUHS was inappropriately "restrictive" or otherwise inappropriate for these reasons.

The evidence also shows that throughout the IEP process the District was willing to consider incorporating many of the components of the parents' proposals into her program at BUHS, which the parents summarily rejected. It

certainly cannot be concluded that a "parent-directed" program without any contact with high-school age peers during school hours was less restrictive than a placement centered at BUHS. In short, the evidence shows that placement at the BUHS Life Education program, though perhaps not as "ideal" as BUHSDC, was adequate to meet the requirements of the student's IEP and was the LRE reasonably available to the student at that time. Thus, it must be concluded that it met the District's responsibility under the law in terms of FAPE. See Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

FURTHER DISCUSSION

In the hearing officer's view, the testimony of the parents' psychiatrist neighbor provided the only insight into the underlying issue that has seemingly driven this matter from the outset--the parents' absolute aversion to placement at BUHS. In this regard the psychiatrist testified that she was initially concerned about the possibility of teasing and sexual harassment at BUHS, and it appears certain that this was, and perhaps still is, the parents' primary concern as well. While this concern is entirely understandable in light of the student's

vulnerability, unfortunately there never was any "evidence" upon which the parents could ultimately support their refusal to consider a BUHS placement as a matter of FAPE on this basis, either before or after their unilateral placement of the student. In the hearing officer's view, it was the parents' unwillingness or inability to accept the distinction between IEP and placement issues that led to their irreconcilable differences with the District culminating in this due process hearing.

However, nothing in this decision should be interpreted as saying that the parents' decision to unilaterally establish a parent-directed program for the student was unreasonable or in any way contrary to the student's best interests. There can be no doubt that the parents in this case have done and are continuing to do an exemplary job of providing their daughter with a quality education and rich and meaningful life experiences. Nobody familiar with the situation would disagree that the student is indeed fortunate to have such capable and dedicated educators and caregivers.

Having ruled almost exclusively in the District's favor in this matter, the hearing officer realizes the above statements might appear insincere and patronizing.

Nonetheless, he deems it important to attempt to provide some additional context for the decision in this matter.

ORDER

The parent's request for reimbursement for their costs regarding the student's 2004-2005 placement is hereby DENIED.

Dated at Montpelier, Vermont this _____ day of November, 2005.

_____
Daniel Jerman, Hearing Officer

Parties have a right to appeal this hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction pursuant to 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.512, which must be commenced within 90 days of the date of this decision.